IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.632 of 2006

Arumaikili ... Petitioner

vs.

1. The Secretary to the Government,
Prohibition and Excise Department,
Secretariat, Chennai-600 009.

2. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai-600 008. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent, dated 08.06.2006, in Memo No.142 of 2006 against the son of the petitioner, confined in Central Prison, Chennai, set aside the same, direct the respondents to produce the detenu before Court and set him at liberty.

For Petitioner : Mr.Abudukumar Rajarathinam for
R. Varadarajan

For Respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor.

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P. SATHASIVAM, J.

The petitioner herein challenges the impugned order of detention, dated 08.06.2006, detaining her son by name Pudumairaj as 'Goonda' as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2. Heard Mr.Abudukumar Rajarathinam, learned counsel for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel appearing for the petitioner, by taking us through the detention order and the grounds of detention, submitted that there is no material for detaining the detenu as Goonda under the Tamil Nadu Act 14 of 1982. Elaborating the above submission, Mr.Abudukumar Rajarathinam pointed out that though, in paragraph No.3 of the grounds of detention, it is stated that the Inspector of Police examined detenu Pudumairaj and co-accused Praveen @ Easuraj, Kannan @ Kumar and Raja @ Syed and recorded their statements; those statements of the co-accused were neither placed before the Detaining Authority nor copies thereof were supplied to the detenu. According to him, the detenu is entitled to copies of all the documents relied on by the Detaining Authority.

4. On going through the entire materials, we are unable to accept the said argument for the following reasons.

It is seen from the grounds of detention that the detenu involved in 10 cases in a short period between December, 2005 and May, 2006. In all these cases, the offences said to have been committed are punishable under Sections-379 & 380 IPC. and it is brought to our notice that, in all the instances, properties were recovered. Coming to the ground case, it pertains to an occurrence that took place on 26.05.2006 and the offences said to have been committed are punishable under Sections-341, 336, 392, 397 and 506(2) IPC relating to wrongful restraint, endangering human body, robbery and criminal intimidation. A perusal of the documents supplied clearly shows that, except the statement of Raja @ Syed, statements of all other co-accused were made available before the Detaining Authority and also supplied to the detenu. Even with regard to the same, the Detaining Authority, in her counter affidavit, has explained that the confession statement of co-accused Raja @ Syed was not relied upon and that the name of the said co-accused has been mentioned for the purpose of narration of the facts. We also verified the documents. As rightly observed by the Detaining Authority, the grounds of detention do not reflect that she had placed reliance on the confession of co-accused Raja @ Syed for arriving at a subjective satisfaction while passing the order of detention against the detenu. As rightly pointed out by the learned Additional Public Prosecutor, the petitioner has not shown any prejudice having been caused to the detenu on account of non-furnishing of the confession statement of the said co-accused. It is also relevant to note that, in spite of the same, a copy was furnished to the detenu at a later point of time. The Detaining Authority, after taking note of the involvement of the detenu in 10 cases within a short span of five months; considering the ground case occurrence and the gravity of the offences said to have been committed therein; and after being satisfied that the detenu is habitually committing crime

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and that, by committing grave crime in public in a busy residential cum business area, he has created alarm and a feeling of insecurity in the minds of the people of the area and thereby acted in a manner prejudicial to the maintenance of public order; passed the impugned order and detained him as Goonda. Thus, we see no valid ground for interference. Accordingly, we reject the contention of the learned counsel for the petitioner.

5. Learned counsel for the petitioner next submitted that, though the petitioner sent a representation to the Governor of Tamil Nadu, there is no information as to the fate of the same and at least whether the same was forwarded to the Detaining Authority/Government. He also contended that, even in the absence of request from the detenu, the confessional statement of Raja @ Syed was sent to the detenu, which shows non-application of mind on the part of the Detaining Authority.

6. Now, let us consider the representation sent to the Governor. It is seen that on 30.06.2006, the petitioner submitted a representation to the Governor of Tamil Nadu by name, highlighting certain grievances, viz., that the cases against her son are all foisted cases and that absolutely there was no compliance of the statutory provisions as well as Article 22(5) of the Constitution of India. No doubt, there is no information as to whether the said representation has been forwarded to the Government and any action was taken thereon. In this regard, Mr.Abudukumar Rajarathinam, learned counsel appearing for the petitioner, relying on the judgment of the Supreme Court reported in (2006) 1 SCC (Cri) 257 (Union of India v. Chaya Ghoshal), submitted that representation to the Governor would amount to representation to the State Government, hence, the same ought to have been considered and disposed of by the Government. He also contended that, in view of the fact that the petitioner has lost her faith on the Detaining Authority and the State Government since the cases were foisted against her son, she is perfectly justified in sending the representation to the Governor and, in that event, the same has to be considered and disposed of. The very same aspect was considered by the Hon'ble Supreme Court in the above referred to decision. The following conclusion of their Lordships is relevant,

> " 16. Coming to the question whether the representation to the President of India meets with the requirement of law, it has to be noted that in Raghavendra Singh v. Supdt., Distt. Jail, Kanpur (1986 (1) SCC 650) and Rumana Begum v. State of A.P. (1993 Supp (2) SCC 341) it was held that a representation to the President of India or the Governor, as the case may be, would amount to representation to the Central Government and the State Government respectively. But this cannot be

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allowed to create a smokescreen by an unscrupulous detenu to take the authorities by surprise, acting surreptitiously or with ulterior motives. Where the order (grounds) of detention specifically indicates the authority to whom the representation is to be made, such indication is also part of the move to facilitate an expeditious consideration of the representations actually made.

17. While dealing with a habeas corpus application, undue importance is not to be attached to technicalities, but at the same time where the court is satisfied that an attempt has been made to deflect the course of justice by letting loose red herrings, the court has to take serious note of unclean approach. Whenever a representation is made to the President or the Governor instead of the indicated authorities, it is but natural that the representation should indicate as to why the representation was made to the President or the Governor and not to the indicated authorities. It should also be clearly indicated as to whom the representation has been made specifically. The President as well as the Governor, no doubt are constitutional Heads of the respective Governments but day-to-day administration at respective levels is carried on by the Heads of the Department-Ministries concerned and designated officers who alone are ultimately responsible and accountable for the action taken or to be taken in a given case. If really the citizen concerned genuinely and honestly felt or is interested in getting an expeditious consideration or disposal of his grievance, he would and should honestly approach the really concerned authorities and would not adopt any dubious devices with the sole aim of deliberately creating a situation for delay in consideration and cry for relief on his own manipulated ground, by directing his representation to an authority which is not directly/immediately concerned with such consideration. "

The above conclusion makes it clear that representation made to the named authorities alone is acceptable, however, in exceptional cases, representation can be made to the President or the Governor instead of the indicated authorities. If any such representation is made to the constitutional authorities other than the indicated authorities, Their Lordships have pointed out that the representation has to indicate as

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to why the same was made to the President or the Governor and not to the indicated authorities.

7. It is not in dispute that, in the grounds of detention, particularly in paragraph No.5, it is specifically stated that the detenu is free to make representation to the Detaining Authority, the State Government and the Advisory Board. In the same paragraph, it is also indicated as to how and through whom such representation is to be made to the said authorities. All these particulars are also available in the Tamil version of the grounds of detention. In such circumstances, we are of the view that, when the petitioner/detenu are very well aware of the named/indicated authorities, it is but proper to make representation only to those authorities. In the representation, dated 30.06.2006, addressed to the Governor, the petitioner has mainly highlighted the merits of the various cases, viz., adverse cases and ground case, filed against the detenu. However, she also stated that she may not get justice at the hands of the Detaining Authority and the Government. It is only a vague statement. Further, if such plea without strong circumstances is accepted, it would pave path for everyone to make such allegations and send their representations to the constitutional authorities like the President and the Governor. Such recourse is not permissible particularly when the detention order clearly mentions the authorities to whom the representation is to be made. In such circumstances, we are unable to accept the contention raised by the learned counsel for the petitioner.

8. Coming to the aspect relating to the detenu being supplied with a copy of the confessional statement of Raja @ Syed, it is true that neither the petitioner nor the detenu made any request for supply of the same, however, merely because the Detaining Authority has forwarded confessional statement of a co-accused, it will, in no way, lead to a presumption that there was non-application of mind on the part of the Detaining Authority. We are unable to understand how the petitioner/detenu was prejudiced in any way. Accordingly, we reject the complaint made by the learned counsel for the petitioner on this aspect.

9. In the light of what is stated above, we do not find any error or infirmity or valid ground for interference. Habeas Corpus Petition fails and the same is dismissed.

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JI.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. Commissioner of Police, Chennai.

2. Secretary to Government, Prohibition and Excise Department, Fort St. George, Chennai 600 009.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

Order in
HCP. No.No.632 of 2006

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